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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,760	10/30/2003	James Kellett	1001.1694101	2840
28075	7590	01/19/2005	EXAMINER	
CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420			WEBB, SARAH K	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/698,760

Applicant(s)

KELLETT ET AL. *KL*

Examiner

Sarah K Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 1-37, 44 and 49-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-43 and 45-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/8/04</u> | 6) <input type="checkbox"/> Other: _____  |

DETAILED ACTION

*Response to Arguments*

Applicant's arguments with respect to claims 38-43 and 45-48 have been considered but are moot in view of the new ground(s) of rejection.

*Information Disclosure Statement*

All of the prior art submitted by the applicant in the Information Disclosure Statement dated 12/8/04 has been made of record. However, the statements filed clearly do not comply with the guidelines set forth in MPEP 2004 regarding both the number of references cited and the elimination of clearly irrelevant art and marginally pertinent cumulative information. This Office allows for submission of information regardless of its pertinence to the claimed invention, and acknowledges that there is no requirement to explain the materiality of submitted English language references. However, the cloaking of a clearly relevant reference by inclusion in a long list of citations may not comply with applicant's duty of disclosure, see *Penn Yan Boats, Inc. v. Sea Lark Boats, Inc.*, 359 F. Supp. 948, aff'd 479 F.2d. 1338, 178 USPQ 577 (5th Cir. 1973), cert. denied 414 U.S. 874 (1974).

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38-43 and 45-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,129,739 to Khosravi in view of US Patent No. 6,660,021 to Palmer et al.

Khosravi discloses several embodiments of filter device, where the filter basket is coupled to the guide wire at multiple locations. The basket (50) in Figure 6 is coupled to the guide wire (52) at

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two points (61,62). The basket (90) in Figure 8 is coupled to the guide wire (92) by way of a sheath (102) at two locations (103,104). The filter baskets described above have two struts and a polymeric covering, but Khosravi fails to form the filter basket as a plurality of interconnected struts.

Palmer discloses many embodiments of a filter basket that is formed from a plurality of interconnected struts. The structure has a plurality of cells and is a "single piece" of interconnected struts. The cells expand in multiple directions, because the struts forming the cells are oriented in different directions. The proximal end of the filter is *generally* open (column 8, lines 57-61) and the distal end is *generally* closed (column 10, line 39). The basket can be made of Nitinol (column 9, line 25 and column 15, line 51), which is inherently a superelastic alloy. Palmer also includes a polymeric web covering (310) coupled to the filter basket in Figure 23, which is described in lines 34-55 of column 15.

Palmer teaches that this type of filter basket is capable of being packed into a small profile and has high longitudinal flexibility (column 7, lines 1-5). In spite of the small profile, the basket has a large expansion ratio (column 4, lines 40-42). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the filter basket of Khosravi as a plurality of interconnected struts, as Palmer teaches that this structure has enhanced delivery properties, such as a small insertion profile, high flexibility, and a high expansion ratio.

#### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory

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action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah K Webb whose telephone number is (571) 272-4706. The examiner can normally be reached on Mon-Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhhuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SKW  
1/13/05

*SKW*

*Julian W. Woo*

**JULIAN W. WOO  
PRIMARY EXAMINER**